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A statute authorizing an issue of municipal bonds was amended by an act increasing the amount authorized and also giving special remedies in addition to, and not in lieu of, those given by the original act, but directing that the bonds "shall on their face stipulate" that the holders are entitled to the remedies contained in the amending as well as in the original act. The bonds were issued after the amending act was

passed, and contained a statement that they were issued in pursuance of the original act and only for the amount authorized thereby. They did not contain any reference to the amending act or stipulation that the holders were entitled to the remedies given thereby. *Held*, that in the absence of such stipulation the holders were not entitled to the remedies given only by the amending act. *Hubbert* v. *Campbellsville Lumber Co.*, 70.

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CONSTITUTIONAL LAW.

1. *Action under constitution, etc., defined.*

A suit does not arise under the Constitution and laws of the United States unless a dispute or controversy as to the effect or construction thereof upon the determination of which the result depends appears in the record by the plaintiff's diverse pleading. *Arbuckle* v. *Blackburn*, 405; *Spencer* v. *Duplan Silk Co.*, 526.

2. *Contracts, impairment of.*

Restraints upon governmental agencies will not be readily implied. There are presumptions against the granting of exclusive rights and against limitations upon the powers of the government. By the statute of 1891, cities in Missouri may erect and operate their own electric light plants, or they may grant the right to persons or corporations to erect and operate such plants for not exceeding a period of twenty years. The city of Joplin by ordinance adopted subsequent to the statute, granted such right for twenty years to a corporation which erected and has ever since operated the plant. The ordinance conferred rights, exacted obligations, fixed rates and provided for its written acceptance and the corporation so accepted it. By a later ordinance the city provided for the issue of bonds to build its own plant. In an action brought by the Light Company to restrain the erection of the plant during the continuance of the twenty year term, on the ground that

the ordinance violated the Federal Constitution in that it impaired the obligation of the contract existing under the ordinance granting the franchise, *held* that as such ordinance did not provide that the city would not erect its own plant no such provision could be implied: that the fact that cities could elect under the statute of 1891 either to erect their own plants or grant franchises, could not in case of their election to grant the franchise be construed as an implied contract not to erect their own plants during the period for which the franchise was granted. *Joplin* v. *Southwest Missouri Light Co.*, 150.

3. *Contracts—Impairment of—Conflicting city ordinances.*
An ordinance of a city of Kentucky before it became a city of the third class giving a water company a right to make and enforce, as part of the conditions upon which it would supply customers, all needful rules and regulations not inconsistent with the law must be construed as to the law, as it might be altered, and when the city becomes a city of the third class and thus has power under the general law to provide the city with water by contract or by works of its own and to make regulations for the management thereof and to fix prices to consumers, an ordinance subsequently enacted during the life of the franchise regulating the management of the waterworks and fixing prices of the water which are not unreasonable, is not void as against the water company under the impairment clause of the Constitution of the United States. *Owensboro* v. *Waterworks Co.*, 358.

4. *Contracts—Provision of tax law exempting corporation not a contract.*
A provision in a general tax law that railroads thereafter building and operating a road north of a certain parallel shall be exempted from the tax for ten years, unless the gross earnings shall exceed a certain sum, is not addressed as a covenant to such railroads and does not constitute a contract with them, the obligations of which cannot be impaired consistently with the Constitution of the United States. *Wisconsin & Michigan Ry. Co.* v. *Powers*, 379.

5. *Commerce clause—Repugnancy of state tax law.*
The provision of the tax law of the State of Tennessee of 1887, that sleeping car companies doing business in the State pay a certain sum per annum per car and which by its terms applies to cars running through the State as well as to those operated wholly within the State, is repugnant to the commerce clause of the Federal Constitution. (*Pickard* v. *Pullman Co.*, 117 U. S. 34.) The provision of the tax law of the State of Tennessee of 1889, that sleeping car companies pay a tax of $3000 per annum in lieu of all other except *ad valorem* tax for one or more passengers taken up at one point within the State and delivered at another and transported wholly within the State and which does not refer to or affect the interstate business of the companies, is not repugnant to the commerce clause of the Federal Constitution. (*Osborne* v. *Florida*, 164 U. S. 650.) Such tax will not be regarded as a disguised attempt to tax the privilege of engaging in

interstate commerce if, under the laws of the taxing State, it is not compulsory for a corporation engaged in interstate commerce to carry on that part of its business which is wholly within that State. (*Pullman Co.* v. *Adams*, 189 U. S. 420); *Allen* v. *Pullman Co.*, 171.

6. *Cruel and unusual punishment—Diversity of sentence in similar cases.*
Undue leniency in one case does not transform a reasonable punishment in another case to a cruel one, and where the highest court of a State has sustained the sentences of ten years each, imposed on two men convicted with a third of a conspiracy to defraud, and such punishment does not from the record appear unreasonable considering the nature of the offense, this court will not set aside the judgment as imposing a cruel and unusual punishment either on the facts or because the other person convicted was only sentenced to seven years. *Howard* v. *Fleming*; *Howard* v. *North Carolina*, 126.

7. *Due process—Hearing before assessment board.*
In the apportionment of assessments for improvements due process of law is afforded to the taxpayer if he is given an opportunity to be heard before the body making the assessment; and, so far as the Federal Constitution is concerned, the state legislature may provide that such hearing shall be conclusive. *Hibben* v. *Smith*, 310.

8. *Due process—Equal protection—Rights unimpaired by eight hour law.*
In the exercise of its power a State may by statute provide that eight hours shall constitute a day's work for all laborers employed by or on behalf of the State or any of its municipalities and making it unlawful for anyone thereafter contracting to do any public work to require or permit any laborer to work longer than eight hours per day except under certain specified conditions and requiring such contractors to pay the current rate of daily wages. And one who after the enactment of such a statute contracts for such public work is not by reason of its provisions deprived of his liberty or his property without due process of law nor denied the equal protection of the laws within the meaning of the Fourteenth Amendment even though it appear that the current rate of wages is based on private work where ten hours constitute a day's work or that the work in excess of eight hours per day is not dangerous to the health of the laborers. *Quœre*, whether a similar statute applicable to laborers on purely private work would be constitutional, not decided. *Atkin* v. *Kansas*, 207.

9. *Due process—Equal protection—Commerce clause.—Construction of and prosecution under constitutional police regulation.*
Where the constitutionality of a police regulation of a State is conceded, the construction placed thereon, and prosecutions commenced in view of such construction thereunder by an officer of the State in the discharge of his duty do not in themselves constitute a deprivation of property without due process of law, a denial of equal protection of the law by the State, or any direct interference with interstate commerce, and afford no ground for the jurisdiction of the Circuit Court as a court of the United States. *Arbuckle* v. *Blackburn*, 405.

10. *Due process—Omission in charge to jury of statement of presumption of innocence.*

When the highest court of the State has decided that in a criminal trial it is sufficient to charge the jury correctly in reference to reasonable doubt and that an omission to refer to any presumption of innocence does not invalidate the proceedings, such an omission cannot be regarded by this court as a denial of due process of law. *Howard* v. *Fleming; Howard* v. *North Carolina*, 126.

11. *Equal protection—Infringement of right by State in exemption law.*

The rights of an individual under the Fourteenth Amendment turn on the power of the State. A State does not infringe his rights under that amendment by exempting a corporation from a tax either wholly or in part, whether such exemption results from the plain language of a statute or from the conduct of a state official under it. *Missouri* v. *Dockery*, 165.

12. *State—Power to limit jurisdiction of state courts.*

Consistently with Article IV, § 1, of the Constitution of the United States, a State may deny jurisdiction to the courts of the State over suits by a corporation of another State against a corporation of another State on a foreign judgment. *Anglo-American Provision Co.* v. *Davis Co.*, 373.

13. *State—Taxation of evidence of credits in hands of agent.*

There is no inhibition in the Federal Constitution against the right of a State to tax property in the shape of credits where the same are evidenced by notes or obligations held within the State, in the hands of an agent of the owner for the purpose of collection or renewal, with a view to new loans and carrying on such transactions as a permanent business. A foreign corporation, whose business in Louisiana was in the hands of an agent, furnished to customers sum of money and took from them collateral security; for reasons satisfactory to the parties, instead of taking the ordinary evidence of indebtedness, the customers drew checks, never intended to be paid in the ordinary way, but intended by the parties to be held as evidence of the amount of money actually loaned; these loans could be satisfied by partial payments from time to time, interest being charged upon the outstanding amounts, and if not paid at maturity the collateral was subject to sale; when paid, the money might be again loaned by the agent to other parties, or remitted to the home office, and the business was large and continuing in its character. *Held*, that as such checks were given for the purpose of evidencing interest bearing debts, they were the evidence of credit for money loaned, localized in Louisiana, protected by its laws, and properly taxable there under the provisions of the tax law of 1898 of Louisiana, which has already been sustained as constitutional by this court. (*New Orleans* v. *Stempel*, 165 U. S. 309.) *Board of Assessors* v. *Comptoir National*, 388.

See RES JUDICATA.

CONTRACTS.

1. *Breach by government of contract for supplies.*

The United States bought hay for a camp, providing that the quantity bought be decreased at its option, not exceeding twenty per cent, and if the troops should be wholly or in part withdrawn the contract should become inoperative to the extent of such reduction, and that deliveries were to begin within five days and proceed at daily rates of at least one sixtieth of the amount, or in such quantities and in such times afterward as might be designated by the quartermaster. The troops were withdrawn, orders were delayed beyond sixty days and a little less than the whole amount was ordered. The claimant protested and claimed damages but accepted payment for the whole without reserving any rights at the time. *Held* that there was no breach of contract by the United States even if it was still open to the claimants to demand damages in case of a breach, and if the setting up of the invalidity of the contract by the United States in answer to the demand would have opened the way to a *quantum valebat*. *St. Louis Hay & Grain Co.* v. *United States*, 159.

2. *Executed—Recovery on a quantum valebat precluded.*

When a void but not illegal contract of sale has been performed on both sides, the vendor cannot recover on a *quantum valebat* less the amount already paid. *Ib.*

See CONSTITUTIONAL LAW, 2, 3, 4; INSTRUCTION TO JURY, 2; INTERSTATE COMMERCE; JURISDICTION, A 6; D; MARITIME LAW; RAILROADS, 1; RES JUDICATA; SURETIES.

CONTRIBUTORY NEGLIGENCE.

See NEGLIGENCE.

COPYRIGHT.

Notice—False impressment in foreign country—Sale of article in United States.

Prior to the amendment of March 3, 1897, there was no provision in the copyright laws forbidding the importation into, or the sale after its importation within, the United States of an article falsely stamped with the copyright notice in a foreign country and the proviso in the amending act expressly saved the right to sell such an article if it had been imported prior thereto. *McLoughlin* v. *Raphael Tuck Co.*, 267.

See STATUTES, A, 1.

CORPORATIONS.

Foreign—Power of State as to.

A corporation created by one State can transact business in another State only with the consent of the latter, which may accompany its consent with such conditions as it thinks proper to impose, provided they are

not repugnant to the Constitution and laws of the United States, or inconsistent either with those rules of public law which secure the jurisdiction and authority of each State from encroachment by all others, or those principles of natural justice which forbid condemnation without opportunity for defense. *Cable* v. *Life Insurance Co.*, 288.

See CONSTITUTIONAL LAW, 13;
TAXATION, 3.

COURTS.

See CONSTITUTIONAL LAW, 12; NATIONAL BANKS, 1;
FEDERAL QUESTION, 5; PRACTICE;
JURISDICTION; RAILROADS, 1;
LAND DEPARTMENT; REMOVAL OF CAUSES;
RES JUDICATA.

COURT AND JURY.

Question for jury—Care in crossing railroad tracks.

Where it is an issue in the case whether a man was killed at a crossing by a regular train which he should know was approaching at about that hour, or by a runaway car of which he had no knowledge, and there is evidence on such issue from which reasonable men might draw different conclusions, it is not error to leave it to the jury to determine whether or not it was a want of ordinary or reasonable care and prudence for deceased to attempt to cross the track at the time and under the circumstances, the jury being charged that their verdict should be for the defendant if they found that he had been killed by the regular train. *Baltimore & Potomac R. R. Co.* v. *Landrigan*, 461.

See INSTRUCTIONS TO JURY.

CRIMINAL LAW.

See CONSTITUTIONAL LAW, 6.

DAMAGES.

Condemnation of land—Prospective damages.

Where the government condemns part of a parcel of land the damage to the remainder of that parcel arising from the probable use which the government will make of the part taken is a proper subject of award, but when the entire parcel is taken the owner cannot recover for prospective damages, owing to such probable use, to separate and adjoining parcels owned by him. *Sharp* v. *United States*, 341.

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See CONSTITUTIONAL LAW.

EJECTMENT.

Alienable title—Power of municipality to convey land acquired under patent.

An act of Congress entitled "An act to enable the City of Denver to purchase certain lands for a cemetery" authorized the mayor to enter the lands at a minimum price "to be held and used for a burial place for said city and vicinity." A patent was issued conveying the land to the "mayor in trust for said city and to his successors" which was confirmed by a later act. The Catholic Bishop of Denver petitioned the common council for a conveyance of a part of the land to him and his successors on the ground that it had been bought by him and used as a burial place. The petition was granted and the mayor made a deed in the name of the city, the grantee being described as Bishop of Colorado, *habendum* to him and his heirs. Subsequently the bishop conveyed a part of the land so conveyed to him which had not been used for burial purposes to defendant's predecessor in title. A later mayor brought ejectment for this part. *Held* that the title was not in the plaintiff. *Semble* that the title was in the city, that it had power to convey the land and that the deed executed was sufficient so far as the question was open. *Wright* v. *Morgan*, 55.

See ADVERSE POSSESSION.

EMINENT DOMAIN.

See DAMAGES;
EVIDENCE, 2, 3;
INSTRUCTIONS TO JURY, 1.

EQUITY.

He who seeks equity must do equity—National Banks and state taxation.

Where the amount of a State tax which shareholders of a National Bank should pay if all the deductions they claimed were allowed, is ascertainable, neither they, nor the bank itself on their behalf, can maintain an action in equity to restrain the collection of the entire tax. They should, under the rule that he who seeks the interposition of a court in equity, must himself do equity, first offer to pay that part of the tax which under their contention is not illegal. *People's National Bank* v. *Marye*, 272.

See JURISDICTION, E, 1;
RAILROADS, 1;
TRADE-NAME.

ERIE CANAL.

See JURISDICTION, D.

ESTOPPEL.

See RES JUDICATA.

EVIDENCE.

1. *Burden of proof of lawful taking of logs in an action by United States for conversion—Cannot be shifted.*

Where, in an action by the United States against a railroad corporation for the conversion of logs cut from government lands, the defendant admits the taking but justifies its action under a statute permitting it to take timber for construction and repair of its railway, the burden of proving that the logs were taken and used in accordance with the statute is upon the defendant. *Northern Pacific R. R. Co.* v. *Lewis*, 162 U. S. 366. This burden cannot be shifted to the plaintiff because the timber was cut by an agent of the defendant. The presumption attaching to public officers that they act within the scope of their authority does not apply to agents of private persons sued for conversion. *United States* v. *Denver & Rio Grande R. R. Co.*, 84.

2. *Competency—Condemnation proceedings—Offers received.*

On condemnation proceedings it was not error, under the circumstances of this case, to exclude evidence offered by the owner as to offers received by him to purchase or lease the property. Evidence as to offers for real estate is entirely different from evidence as to prices offered and accepted or rejected for articles which are constantly dealt in and have a known and ready sale in the markets and exchanges. *Sharp* v. *United States*, 341.

3. *Competency—Condemnation poceedings on new trial de novo.*

Where on condemnation proceedings, under the practice in New Jersey, after a trial in the District Court there is a new trial in the Circuit Court with a jury, the trial is *de novo* and the only testimony to be considered is that received on the second trial supplemented by the personal view of the premises by the jury. *Ib.*

See MARITIME LAW, 3.

FEDERAL QUESTION.

1. *Essentials for bringing Federal question before Supreme Court.*

When a suit does not really and substantially involve a dispute or controversy as to the effect or construction of the Constitution or laws of the United States, upon the determination of which the result depends, it is not a suit arising under the Constitution or laws; and it must appear on the record, by a statement in legal and logical form, such as is required in good pleading, that the suit is one which does really and substantially involve a dispute or controversy as to a right which depends on the construction of the Constitution or some law or treaty of the United States, before jurisdiction can be maintained on this ground. *Defiance Water Co.* v. *Defiance*, 184.

2. *State not Federal—Amount of benefits—Decision of assessment board.*

The amount of benefits resulting from an improvement, and assessed under

a state statute which this court has declared to be constitutional is a question of fact, and a hearing upon it being assumed, the decision of the board making the assessment is final and no Federal question arises. *Hibben* v. *Smith*, 310.

3. *State not Federal—Question of public officer's power.*

The extent of the power of a public officer to question the constitutionality of a state statute as an excuse for refusing to enforce it is purely a local question. (*Huntington* v. *Worthen*, 120 U. S. 1.) *Smith* v. *Indiana*, 138.

4. *State not Federal—Validity of judgment of state court.*

Whether a judgment in a state court based on an assessment is void or only voidable because some of the members of the board were residents of, and taxpayers in, the assessment district is a proper question for the state courts to decide, and after the highest court of the State has held that the judgment is not void and cannot be attacked collaterally, this court will follow that determination. *Hibben* v. *Smith*, 310.

5. *State courts competent to decide—Interposition of Federal courts in case involving.*

State courts are competent to decide Federal questions arising before them; it is their duty to do so, and the presumption is that they will do what the Constitution and laws of the United States require. If error intervenes the remedy is found in § 709 of the Revised Statutes, and the Federal courts cannot be called on to interpose in a controversy properly pending in the state courts on the ground that the state court might so decide as to render their final action unconstitutional. *Defiance Water Co.* v. *Defiance*, 184.

See JURISDICTION.

FOREIGN CORPORATION.

See CONSTITUTIONAL LAW, 13;
CORPORATIONS.

FOREIGN STATE.

Action by, on behalf of lessee—Rule of nullum tempus.

The rule of *nullum tempus* cannot be invoked in our courts in favor of a foreign government suing for the benefit of an individual which is its lessee. *Quære*, and not decided, whether the rule could be invoked by a foreign government even when suing in its sovereign capacity. *French Republic* v. *Saratoga Vichy Co.*, 427.

See TREATIES.

GEOGRAPHICAL NAME.

See TRADE-NAME.

GOVERNMENTAL POWER.

Regulation of water rates—Alienable only by grant.

The power to regulate water rates is a governmental power continuing in its nature which, if it can be bargained away at all, can only be by words of positive grant and if any reasonable doubt exists in regard thereto it must be resolved in favor of the existence of the power. *Owensboro* v. *Waterworks Co.*, 358.

GUARANTY.

See SURETIES.

HARTER ACT.

See MARITIME LAW, 1, 3, 5.

HIGHWAYS.

See NEGLIGENCE, 2;
PUBLIC WORKS.

IMPORTS.

See TAXATION, 1.

INDICTMENT.

See JURISDICTION, A 5.

INJUNCTION.

See RAILROADS, 1.

INSTRUCTIONS TO JURY.

1. *Condemnation proceedings—Question of value.*

Where all the circumstances as to value, including prospective enhancement if projected railroads and trolleys were built, are left to the jury, which was also permitted to consider damages to adjoining parcels if by reason of the parcel taken, they were made too small to work profitably, this court will not reverse on the ground that the jury was not properly charged as to questions of value. *Sharp* v. *United States*, 341.

2. *Sufficiency, as to measure of damages.*

Plaintiff (below) contracted with defendant street railway company to convey to it a right of way through her land and to pay five hundred dollars in five years, it to construct extension over such right of way and operate same, running cars at certain designated hours. The right of way was conveyed, the note given, the extension constructed and operated for several years, after which the railroad company ceased and refused to run its cars at the times designated, whereupon, her note being then overdue and unpaid, plaintiff demanded the removal of the tracks which was done. In an action to recover damages for breach of contract the trial court instructed the jury that

the measure of damages was the excess, if any, in the market value of the land at the time the defendant entirely ceased to run its cars upon that part of the line which extended to and through the plaintiff's land with the cars running in accordance with the terms of the contract of the parties in evidence, and the expectation of their continuing so to run in the future, over the market value of the said land at the same time without any cars running on said part of said line and without any expectation that they would ever run thereon. *Held* that the instruction was not sufficiently guarded and was erroneous, that what might have been made by selling the land at a value enhanced by the operation of the extension in perpetuity was too dependent on uncertain contingencies to justify peremptorily instructing the jury that such anticipated gains were probable and contemplated consequences of the breach. *Eckington & Soldiers' Home Ry. Co.* v. *McDevitt*, 103.

3. *Sufficiency—Failure to state in detached remarks proper limitation of liability.*

Where it appears by an examination of the entire charge to the jury that the court understood the true rule as to defendant's liability and the jury were informed of the limitations thereon, no exception being taken except to a single detached remark, and no request being made to the court to restate the rule with his attention called to the defective portion of his charge, the judgment will not be reversed because in certain detached and incidental remarks made in regard to defendant's liability the court failed to state the proper limitation of liability, it also appearing that the remarks were used under such circumstances as made it absolutely certain that the jury was not misled thereby. *Choctaw, Okla. & G. R. R. Co.* v. *Tennessee*, 326.

4. *Sufficiency—Omission as to reasonable care immaterial.*

There is no necessity for the court to call the attention of the jury to the rule that a railroad company is only bound to exercise reasonable care to supply a reasonably safe engine, when it appears from uncontradicted evidence that the engine supplied was not equipped with brakes under circumstances which made the omission *prima facie* evidence of negligence. *Choctaw, Okla. & G. R. R. Co.* v. *Holloway*, 334.

See CONSTITUTIONAL LAW, 10;
COURT AND JURY.

INSURANCE COMPANIES.

See JURISDICTION, E 1.

INTERSTATE COMMERCE.

Contracts for limiting liability of carrier—Powers of State in absence of Congressional legislation.

While Congress under its power may provide for contracts for interstate commerce permitting the carrier to limit its liability to a stipulated valuation, it does not appear that Congress has, up to the

present time, sanctioned contracts of this nature; and, in the absence of Congressional legislation on the subject, a State may require common carriers, although in the execution of interstate business, to be liable for the whole loss resulting from their own negligence a contract to the contrary notwithstanding. There is no difference in the application of a principle based on the manner in which a State requires a degree of care and responsibility whether enacted into a statute or resulting from the rules of law enforced in its courts. *Pennsylvania R. R. Co.* v. *Hughes*, 477.

See CONSTITUTIONAL LAW, 9;
TAXATION, 1, 3.

JUDGMENT.

Validity not affected by omission of recital of reasons for.

This court will not hold that the omission of the recital of reasons which justify the peculiar form of a sentence will invalidate a judgment which is warranted by the statute and which has been sustained by the highest court of the State. *Howard* v. *Fleming; Howard* v. *North Carolina*, 126.

See FEDERAL QUESTION, 4;
JURISDICTION, A 7.

JURISDICTION.

A. OF THIS COURT.

1. *Appeals in bankruptcy.*

Appeals to this Court from decrees of the Circuit Courts of Appeals revising proceedings of the inferior courts of bankruptcy under section 24 b of the bankruptcy law, will not lie. *Holden* v. *Stratton*, 115.

2. *Direct certification from Circuit Court; question of jurisdiction of Circuit Court as Federal court.*

The question of jurisdiction which the Judiciary Act of March 3, 1891, c. 517, 26 Stat. 826, permits to be certified directly to this court must be one involving the jurisdiction of the Circuit Court as a Federal court, and not simply its general authority as a judicial tribunal to proceed in harmony with established rules of practice governing courts of concurrent jurisdiction as between themselves. Where the Circuit Court has jurisdiction and appoints a receiver the question of jurisdiction under the above act cannot, on the intervention of a receiver appointed by the state court, be decided and certified directly to this court to ascertain whether the Circuit Court or the state court had prior authority over the trust estate involved in the litigation. This court need not consider itself bound as to a question of jurisdiction because it may have exercised jurisdiction in a case where the question might have been raised but passed *sub silentio*. (*United States* v. *More*, 3 Cranch, 159, 172.) *Louisville Trust Co.* v. *Knott*, 225.

3. *Direct appeal from Circuit Court for revision of judgment on merits.*

When the Circuit Court has decided the question of its jurisdiction and

the alleged unconstitutionality of a state law in favor of the plaintiff, but has decided against him on the merits, the plaintiff cannot appeal directly to this court under the act of March 3, 1891, c. 517, § 5, for the purpose of a revision of the judgment on the merits. *Anglo-American Provision Co.* v. *Davis Co.*, 376.

4. *Error to state court—Effect of discussion of Federal question by state court.*

Where no claim to protection under the Federal Constitution was presented to the Supreme Court of the State, a writ of error will not lie from this court even though Federal questions were discussed in the opinions of the state court. *Howard* v. *Fleming*; *Howard* v. *North Carolina*, 126.

5. *Error to state court—Common-law offense cognizable by state court—Sufficiency of indictment.*

The decision of the highest court of a State that conspiracy to defraud is a common-law offense and as such cognizable in the courts of that State, although there be no statute defining or punishing such a crime, is not a Federal question, nor reviewable by this court. Nor can this court inquire whether the indictment sufficiently charged the offense. *Howard* v. *Fleming*; *Howard* v. *North Carolina*, 126.

6. *Error to state court—Review of judgment of state court.*

A bill of lading was given in New York State for transporting a horse to a point in Pennsylvania, containing a clause limiting the carrier's liability to a stipulated value in consideration of the rate paid, the shipper having been offered a bill of lading without such limitation on payment of a higher rate signed a memorandum accepting the contract at the lower rate. The common law as interpreted by the courts of New York and the Federal courts permits a common carrier to limit by contract his liability for his own negligence; as interpreted by the courts of Pennsylvania he cannot so limit it. On writ of error to review a judgment recovered in a state court of Pennsylvania by the shipper for damages caused by the negligence of the carrier in excess of the limited amount: *Held* that the jurisdiction of this court to review a judgment of a state court under section 709, U. S. Rev., depends upon the assertion of a right, privilege or immunity under the Federal Constitution or laws set up and denied in the state courts. *Held* that the highest court of a State may administer the common law according to its own understanding and interpretation thereof, being only amenable to review in this court where some immunity or privilege created by the Federal power has been asserted and denied. *Pennsylvania R. R. Co.* v. *Hughes*, 477.

7. *Judgment of Circuit Court of Appeals in action by National Bank, finality of.*

An action brought by a national banking association in a circuit court of the United States against citizens of another State, where no ground of jurisdiction appears in the record except diversity of citizenship

is not, owing to the mere fact that the plaintiff is organized under the national banking law, one arising under the laws of United States, and under the Judiciary Act of March 3, 1891, the judgment of the Circuit Court of Appeals is final and, therefore, not subject to review by this court. *Continental National Bank* v. *Buford*, 119.

8. *First and fundamental question on writs of error and appeals.*
On every writ of error or appeal the first and fundamental question is that of jurisdiction, first of this court and then of the court from which the record comes, and such a question arising on the face of the record cannot be ignored. It must be answered by the court whether propounded by counsel or not. *Continental National Bank* v. *Buford* 119. *Defiance Water Co.* v. *Defiance*, 184.

9. *Who may invoke—Personal interest of party essential.*
The jurisdiction of this court can only be invoked by a party having a personal interest in the litigation. Where a public officer of a State who has no interest in the controversy except as such officer tests the constitutionality of a state statute purely in the interests of third parties, by a suit in the state courts and a judgment has been rendered against him by the highest court of the State, a writ of error from this court to revise such judgment will not lie. The fact that costs were rendered against him personally in the state court will not give this court jurisdiction in such case. *Smith* v. *Indiana*, 138.

See JURISDICTION, B.

B. OF CIRCUIT COURT OF APPEALS.

1. *Finality of judgment.*
Where the jurisdiction of the Circuit Court is invoked on the ground of diverse citizenship it will not be held to rest also on the ground that the suit arose under the Constitution of the United States unless it really and substantially involves a dispute or controversy as to the effect or construction of the Constitution upon the determination of which the result depends, and which appears on the record by a statement in legal and logical form such as good pleading requires; and where the case is not brought within this rule the decree of the Circuit Court of Appeals is final. *Arbuckle* v. *Blackburn*, 405.

2. Where jurisdiction of the Circuit Court is rested on diverse citizenship and plaintiff relies wholly on a common-law right, the fact that defendant invokes the Constitution and laws of the United States does not make the action one arising under the Constitution and laws of the United States and the judgment of the Circuit Court of Appeals is final. *Spencer* v. *Duplan Silk Co.*, 526.

See ANTE A 7.

C. OF CIRCUIT COURTS.

Equity—Power to maintain cause as involving Federal question.
The fact that the council of a city has passed a resolution providing for

payment of a pending bill of a water company claiming a franchise, with a saving clause against the city, being estopped from denying the existence of contract right, does not give the Circuit Court jurisdiction to maintain an action in equity to enjoin the city from appropriating money in the water fund to the payment of any indebtedness other than the complainant on the ground that such resolution is a law impairing the obligation of a contract within the purview of the Federal Constitution. *Defiance Water Co.* v. *Defiance*, 184.

See CONSTITUTIONAL LAW, 3, 9;
REMOVAL OF CAUSES.

D. OF ADMIRALTY COURTS.

Scope—Erie Canal within—Enforcement of lien for repairs to canal boat.

1. Although the Erie Canal is wholly within the State of New York, it connects navigable waters and is a great highway of commerce between ports in different States and foreign countries, and is, therefore, a navigable water of the United States within the legitimate scope of the admiralty jurisdiction of the courts of the United States.
2. The enforcement of a lien *in rem* for repairs made in a port of the State to which it belongs to a canal boat engaged in traffic on the Erie Canal and the Hudson River is wholly within the jurisdiction of the admiralty courts and such lien cannot be enforced by any proceeding *in rem* in the courts of the State of New York.
3. The contract for making such repairs is a maritime contract and its nature as such is not affected by the fact that the repairs were made in a dry dock or by the fact that the canal boat was engaged in traffic wholly within the State of New York. (*The Belfast*, 7 Wall. 624.) *The Robert W. Parsons*, 17.

E. OF FEDERAL COURTS GENERALLY.

1. *Equity—Not invocable for relief of foreign corporation sued in state court, where right of removal exists.*

Where an insurance company, citizen of one State, has voluntarily accepted a license from another State, and has been sued in a court of that State, the fact that the license is subject to be revoked if the company should remove the action to the Federal courts, furnishes no ground for appealing to a Federal court to take jurisdiction of a suit in equity to cancel the policy if otherwise the court would have no jurisdiction. The theory that a complainant has no adequate remedy at law because it would not have the same control over an action brought against it as defendant as it would have as plaintiff in a suit brought by it, does not lay the foundation for the jurisdiction of a Federal court in an action at equity to enjoin the prosecution of the suit against it. Equitable jurisdiction does not accrue to the Federal court because it is thought that the law as administered by it is more favorable to a party seeking its aid than the law as administered by the courts of a State in which it has been sued, *Cable* v. *Life Insurance Co.*, 288.

2. *Act of March 3, 1881—Trade-marks used in foreign commerce.*

It is the use without right of the registered trade-mark of another in foreign or Indian commerce that gives jurisdiction to the Federal courts under the act of March 3, 1881. The averments of the bill in this case are treated as sufficiently asserting the use of the registered trade-mark and the alleged imitation in foreign commerce to found jurisdiction in the Circuit Court under the act as well as on diverse citizenship. *Warner* v. *Searle & Hereth Co.*, 195.

See RES JUDICATA.

F. OF STATE COURTS.

See CONSTITUTIONAL LAW, 12;
JURISDICTION, D;
NATIONAL BANKS, 1.

JURY.

See EQUITY;
INSTRUCTIONS TO JURY.

LACHES.

See TRADE-NAME, 2.

LAND DEPARTMENT.

Conclusiveness of decision.

The decision of the Land Department in a contest case is conclusive in the courts upon all questions of fact. *Gertgens* v. *O'Connor*, 237.

LAND GRANTS.

See ADVERSE POSSESSION;
EJECTMENT;
PATENTS.

LIMITATIONS.

See ADVERSE POSSESSION;
FOREIGN STATE.

LOCAL LAW.

California. Title of statute (see Statutes, A 5). *Ross* v. *Aguirre*, 60.

District of Columbia. Negligence (see Negligence, 2). *Mosheuvel* v. *District of Columbia*, 247.

Illinois. Foreign Corporations (see Corporations). *Cable* v. *United States Life Insurance Co.*, 288.

Indiana. Assessment for taxation (see Constitutional Law, 7; Federal Question, 4). *Hibben* v. *Smith*, 310.

Kansas. Eight hour law (see Constitutional Law, 8). *Atkin* v. *Kansas*, 207.

Kentucky. Municipal bonds (see Bonds). *Hubbert* v. *Campbellsville Lumber Co.*, 70.

Kentucky. Municipal ordinances (see Constitutional Law, 3). *Owensboro* v. *Waterworks, Co.*, 358.

Louisiana. Tax law of 1898 (see Constitutional Law, 13). *Board of Assessors* v. *Comptoir National*, 388.

Michigan. Taxation of railroads (see Constitutional Law, 4). *Wisconsin & Mich. Ry. Co.* v. *Powers*, 379.

Missouri. Municipal powers (see Constitutional Law, 2). *Joplin* v. *Southwest Missouri Light Co.*, 150.

New Jersey. Practice in condemnation proceedings (see Evidence, 3). *Sharp* v. *United States*, 341.

Tennessee. Tax laws of 1887 and 1889 (see Constitutional Law, 5). *Allen* v. *Pullman Co.*, 171.

Utah. Limitations (see Adverse Possession). *Toltec Ranch Co.* v. *Cook and Babcock*, 532, 542.

Virginia. Taxation of National Banks (see Equity; Taxation, 2). *People's National Bank* v. *Marye*, 272.

MARITIME LAW.

1. *Contracts—"Dressed beef clause" a violation of Harter Act.*

The Harter Act, 27 Stat. 445, expressly prohibits the insertion in bills of lading of any covenant or agreement lessening, weakening or avoiding the obligation of the owner to use due diligence to make the vessel seaworthy and capable of performing her intended voyage. The "dressed beef clause" inserted in bills of lading of a vessel engaged in that trade releasing the vessel from damages even though caused by defects in the refrigerating apparatus, whether existing at or prior to the commencement of the voyage is in violation of this provision of the Harter Act and will not relieve the vessel from such liability in the absence of proof that the owner has used due diligence at the commencement of the voyage to make the vessel including the refrigerating apparatus reasonably fit for the purposes and uses for which it is intended and thus seaworthy. *The Southwark*, 1.

2. *Contracts, for repairs to vessels in dry dock—Maritime nature of.*

A contract for making repairs to a canal boat engaged in traffic on the Erie Canal and Hudson River is a maritime contract and its nature as such is not affected by the fact that the repairs were made in a dry dock or by the fact that the boat was engaged in traffic wholly within a State. *The Robert W. Parsons*, 17.

3. *Seaworthiness, burden of proof as to.*

The burden of proof as the seaworthiness of the vessel at the time of sailing is on the owner. The sudden breakdown of the refrigerating apparatus within three hours of sailing raises a presumption of unseaworthiness at the time of sailing, independently of the Harter Act. *The Southwark*, 1.

4. *Seaworthiness—Refrigerating plant included.*

Seaworthiness of a vessel engaged in the dressed meat trade relates and

extends to the refrigerating apparatus necessary for the preservation of the meat during transportation. *Ib.*

5. *Seaworthiness, warranty of.*

Before the passage of the Harter Act, 27 Stat. 445, there was, in the absence of special contract, an absolute warranty, on the part of the shipowner, which did not depend upon his knowledge or diligence, that the vessel was seaworthy at the beginning of the voyage. *Ib.*

See JURISDICTION, D;
NAVIGABLE WATERS.

MASTER AND SERVANT.

Railroad employe entitled to what degree of care—Right to presume use of due diligence by employer—Assumption of risk by, a question for the jury.

It is the duty of a railroad company to use due care to provide a reasonably safe place and safe appliances for the use of workmen in its employ. It is obliged to use the same degree of care to provide properly constructed roadbed, structures and track to be used in the operation of the road. The servant has a right to assume that the master has used due diligence in providing suitable appliances for the operation of his business and does not assume the risk of the employer's negligence in making such provision. While an employé who continues without objection in his master's employ with knowledge of a defective apparatus assumes the hazard incident to the situation, unless the evidence plainly shows the assumption of the risk, it is a question properly left to the jury. *Choctaw, Okla. & G. R. R. Co.* v. *McDade*, 64.

See NEGLIGENCE, 1.

MEASURE OF DAMAGES.

See INSTRUCTIONS TO JURY, 2.

MUNICIPAL CORPORATIONS.

Relation to State—Limitation on power of legislature.

Municipal corporations are, in every essential, only auxiliaries of the State for the purposes of local government. They may be created, or, having been created, may be destroyed, or their powers may be restricted, enlarged or withdrawn at the will of the Legislature, subject only to the fundamental condition that the collective and individual rights of the people of the municipality shall not thereby be destroyed. *Atkin* v. *Kansas*, 207.

See BONDS;
CONSTITUTIONAL LAW, 2;
EJECTMENT.

NATIONAL BANKS.

1. *Usury—Action against to recover usurious interest—Jurisdiction of state court—Taking of real estate security by.*

(a) Where usurious interest has been paid to a national bank the remedy afforded by section 5198, U. S. Rev. Stat., is exclusive and is confined to an independent action to recover such usurious payment. (*Haseltine* v. *Central National Bank*, 183 U. S. 118.)

(b) A claim that usurious interest has been paid on a debt to a national bank secured by mortgage on real estate given by the debtors to an individual for the benefit of the bank cannot be asserted under the state law in foreclosure proceedings in the state courts.

(c) Where the state law does not forbid an agent from taking security for the benefit of a principal the taking of real estate security by the president of a national bank for a debt due to the bank is in legal effect the taking of such security by the bank itself.

(d) The provisions of the United States statutes forbidding the taking of real estate security by a national bank for a debt coincidently contracted do not operate to make the security void but simply subjects the bank to be called to account by the government for exceeding its powers. (*Logan County* v. *Townsend*, 139 U. S. 67); *Schuyler National Bank* v. *Gadsden*, 451.

2. *Citizenship of.*

By the acts of July 12, 1882, March 3, 1887 and August 13, 1888, national banks are, for purposes of the jurisdiction of the United States courts in actions by or against them, to be deemed citizens of the States in which they are located. *Continental National Bank* v. *Buford*, 119.

See JURISDICTION, A, 7;
EQUITY;
TAXATION, 2.

NAVIGABLE WATERS.

Erie Canal a navigable water of the United States.

Although the Erie Canal is wholly within the State of New York, it connects navigable waters and is a great highway of commerce between ports in different States and foreign countries, and is, therefore, a navigable water of the United States within the legitimate scope of the admiralty jurisdiction of the courts of the United States. *The Robert W. Parsons*, 17.

NAVY PERSONNEL ACT.

See STATUTES, A 3.

NEGLIGENCE.

1. *Contributory—Employé's knowledge of machinery.*

If an employé can by the use of his eyes see that the machinery is defective he is bound by that fact, even though he has not actually observed the defect; but a fireman who has only been six hours on an engine is not bound to have made a careful examination of the engine, in order to charge the company with negligence or to exoner-

ate himself from contributory negligence. *Choctaw, Okla. & G. R. R. Co.* v. *Holloway*, 334.

2. *Contributory—Use of public highway—Reasonable prudence.*

There is no rule of law in the District of Columbia that where a defect exists in a highway and is known to one who elects to use such highway such election, even if justified by the dictates of ordinary prudence must, as a matter of law, entail the consequences of a want of ordinary care and prudence. Where a hole exists in a sidewalk as the result of negligence on the part of the authorities, and renders ingress and egress from a house more or less dangerous, it is not such contributory negligence *per se* on the part of an occupant of such house having knowledge of the hole to try to step over it, as had been done on previous occasions, instead of going around it as will justify the direction of a verdict for the defendant. It is for the jury to determine from all the conditions whether the situation of the defect and the hazard to result from an attempt to step over it was so great that plaintiff, with the knowledge of the situation, could not as a reasonably prudent person have elected to step over, instead of going around it. *Mosheuvel* v. *District of Columbia*, 247.

3. *Proximate cause—Railroad accident—Question for jury.*

Where the company has negligently failed to equip an engine with brakes and it is derailed by striking an obstacle which was on the track without negligence of the company, and there is evidence that the engine could have been stopped more quickly with, than without, brakes, it is for the jury to say whether there would have been an accident had the brakes been on and fit to use; and if the obstacle caused the necessity for brakes, the neglect of the company to furnish them constitutes the immediate and proximate cause of the accident rather than the existence of the obstacle. *Choctaw, Okla. & G. R. R. Co.* v. *Holloway*, 334.

See COURT AND JURY; MASTER AND SERVANT; INSTRUCTIONS TO JURY, 4; PRESUMPTION; RAILROADS, 2.

NULLUM TEMPUS.

See FOREIGN STATE.

PARTIES.

See JURISDICTION, A 9; E 1.

PATENTS.

Land—Definition—Conclusiveness.

A patent is a conveyance by the government of the title, and is conclusive in the hands of the patentee as against every individual unable to show a superior right, legal or equitable. *Gertgens* v. *O'Connor*, 237.

PLEADING.

See FEDERAL QUESTION, 1;
JURISDICTION, B; E 2;
RES JUDICATA.

POLICE REGULATIONS.

See CONSTITUTIONAL LAW, 9.

POWERS OF CONGRESS.

See INTERSTATE COMMERCE.

POWERS OF GOVERNMENT.

See CONSTITUTIONAL LAW, 2.

PRACTICE.

1. *Amicus curiæ, leave to file brief as, denied.*

Where it does not appear that applicant is interested in any other case which will be affected by the decision of the pending case, and the parties are represented by competent counsel, the need of assistance cannot be assumed and leave to file brief as *amicus curiæ* will not be granted. *Northern Securities Co.* v. *United States*, 555.

2. *Mandate to court lacking jurisdiction on appeal from dismissal of bill for other cause.*

Where in an action of which the lower court did not have jurisdiction the bill was dismissed, but not for want of jurisdiction, the decree will be reversed by this court at the cost of appellant who takes nothing by the appeal and remanded to the lower court with instructions to dismiss the bill for want of jurisdiction. *Defiance Water Co.* v. *Defiance*, 184.

3. *Question of jurisdiction—Cognizance of by court—To be answered.*

The fundamental question of jurisdiction, first, of this court, and then of the court from which the record comes, presents itself on every writ of error and appeal, and must be answered by the court whether propounded by counsel or not. *Ib.*

4. *Removal of causes—Amendment of petition for removal.*

Petitions and bonds for removal are in the nature of process. Where a petition for removal otherwise sufficient contains a general averment of diverse citizenship with a specific and full averment of defendant's citizenship and the requisite diverse citizenship of the plaintiff may also reasonably be inferred from the record, the Circuit Court has power, before any action has been had on the merits in the Federal courts or any steps taken in the state courts after the removal, to permit the petition to be amended by the addition of specific and complete averments of the citizenship of the plaintiff. *Kinney* v. *Columbia S. & L. Association*, 78.

5. *State court's rulings as to state law followed.*

This court will follow the ruling of the highest court of a State when it

has held that a state statute does not violate the constitution of that State. *People's National Bank* v. *Marye*, 272.

See FEDERAL QUESTION, 1, 4;
JURISDICTION, A 2; B;
PROHIBITION.

PRESUMPTION.

1. *Care in crossing railroad tracks.*

In the absence of evidence to the contrary there is a presumption that one who was killed while crossing a railroad track at night, stopped, looked and listened before attempting to cross the track. *Baltimore & Potomac R. R. Co.* v. *Landrigan*, 461.

2. *Powers of government, limitations upon.*

Restraints upon governmental agencies will not be readily implied. There are presumptions against the granting of exclusive rights and against limitations upon the powers of government. *Joplin* v. *Southwest Missouri Light Co.*, 150.

3. *Scope of authority.*

The presumption attaching to public officers that they act within the scope of their authority does not apply to agents of private persons sued for conversion. *United States* v. *Denver & Rio Grande R. R. Co.*, 84.

See CONSTITUTIONAL LAW, 10;
MARITIME LAW, 3.

PRINCIPAL AND AGENT.

See NATIONAL BANKS, 1.

PROCESS.

See WRIT AND PROCESS.

PROHIBITION.

A writ of prohibition will not be issued to an inferior court in respect of a cause which is finished. *Ex parte Joins*, 93.

PROXIMATE CAUSE.

See NEGLIGENCE, 3.

PUBLIC LANDS.

See ADVERSE POSSESSION; EVIDENCE, 1;
EJECTMENT; STATUTES, A 2.

PUBLIC OFFICERS.

See EVIDENCE, 1; JURISDICTION, A 9;
FEDERAL QUESTION, 3; PRESUMPTION, 3.

PUBLIC WORKS.

Highway building a public, not a private, work.

The building of a highway whether done by the State directly, or by one

of its instrumentalities—a municipality—is work of a public, not a private, character. *Atkin* v. *Kansas*, 207.

See CONSTITUTIONAL LAW, 8.

RAILROADS.

1. *Station—Injunction to restrain erection of.*

A railroad company on receiving from the plaintiff a conveyance of land for its road agreed for itself and its assignees not to build a depot within three miles of one which it built on the land conveyed. Subsequently it sold its road to defendant who proposed to build a station within the three miles, in pursuance, as was admitted, of an order of the State Railroad Commissioner. *Held* that the injunction should not issue. *Quære* whether the burden of the contract passed to the defendant. Whether a railroad station shall be built in a certain place is a question involving public interests. If it appears to the court that it would be against public policy to issue an injunction against a railroad corporation, the court may properly refuse to be made an instrument for such a result whatever the pleadings in the case may be. *Beasley* v. *Texas & Pacific Ry. Co.*, 492.

2. *Warning of danger—Position of gates at night—Knowledge of custom by individual affecting negligence.*

Where it appears that it was customary to keep the gates at a railway down during the night without regard to the approach or presence of cars, trains or locomotives, the fact that they are down is not of itself a warning of the presence of danger to one acquainted with such custom, while crossing the track at a time when the gates were generally down. *Baltimore & Potomac R. R. Co.* v. *Landrigan*, 461.

See EVIDENCE, 1; JURISDICTION, A 6; INSTRUCTIONS TO JURY, 2, 4; MASTER AND SERVANT; NEGLIGENCE, 3.

REMOVAL OF CAUSES.

Status in Circuit Court of action in bankruptcy removed from state court.

Where a trustee in bankruptcy commences an action in the state court its removal on the ground of diverse citizenship places it in the Circuit Court as if it had been commenced there on that ground of jurisdiction and not as if it had been commenced there by consent of defendant under section 23 of the bankruptcy act. *Spencer* v. *Duplan Silk Co.*, 526.

See JURISDICTION, E 1; PRACTICE, 4.

RES JUDICATA.

Adjudication of Federal court on question of contract based on judgment of state court subsequently reversed.

1. A right claimed under the Federal Constitution, finally adjudicated in

the Federal courts, can never be taken away or impaired by state decisions, refusing to give due weight to such Federal judgment properly invoked for the protection of the party in whose favor it was rendered. *Deposit Bank* v. *Frankfort*, 499.

2. When a state court refuses to give effect to a judgment of a Federal court which adjudicates that one of the parties has a contract within the protection of the impairment clause of the Federal Constitution it denies a right secured by the judgment of the Federal court upon matters wherein its decision is final until reversed in an Appellate Court or modified or set aside in the court of its rendition. *Ib.*
3. The adjudication of a Federal court establishing a contract exempting from taxation although based upon the judgment of a state court given as a reason therefor is equally effectual as *res judicata* between the parties as though the Federal court had reached its conclusion as upon an original question; and under the doctrine of *res judicata* such adjudication will estop either party in subsequent litigation between themselves from again litigating the question of contract determined in the former action, even though the judgment of the state court upon which the Federal court based its decision has meanwhile been reversed by the highest court of that State. *Ib.*
4. Where it has been litigated and determined in a Federal court that the state law under which the taxes were levied is unconstitutional within the impairment clause of the Constitution because of a contract which exempted from all taxation, including particular years then in controversy, the question is *res judicata* as to the right to levy the tax under such law in any other year although it may have been established by the highest court of that State that an adjudication concerning taxes for one year cannot be pleaded as an estoppel in suits involving taxes of other years. *Ib.*

RETROSPECTIVE LEGISLATION.

See STATUTES, A 4.

SHIPPING.

See MARITIME LAW.

STATE.

Power to prescribe conditions of public works—Eight hour law.

It is within the power of a State, as guardian and trustee for its people and having full control of its affairs, to prescribe the conditions upon which it will permit public work to be done on behalf of itself or its municipalities. In the exercise of these powers it may by statute provide that eight hours shall constitute a day's work for all laborers employed by or on behalf of the State or any of its municipalities and making it unlawful for any one thereafter contracting to do any public work to require or permit any laborer to work longer than eight hours per day except under certain specified conditions and requiring such contractors to pay the current rate of daily wages. And one who after the enactment of such a statute contracts for such public

work is not by reason of its provisions deprived of his liberty or his property without due process of law nor denied the equal protection of the laws within the meaning of the Fourteenth Amendment even though it appear that the current rate of wages is based on private work where ten hours constitute a day's work or that the work in excess of eight hours per day is not dangerous to the health of the laborers. *Quære*, whether a similar statute applicable to laborers on purely private work would be constitutional, not decided. *Atkin* v. *Kansas*, 207.

See CONSTITUTIONAL LAW, 8, 9, 11, 12, 13; CORPORATIONS; EQUITY; FOREIGN STATE; INTERSTATE COMMERCE; LOCAL LAW; MUNICIPAL CORPORATIONS; RES JUDICATA; TAXATION.

STATUTES.

A. CONSTRUCTION OF.

1. *Extraterritorial operation—Effect of false impressment, in foreign country, of notice of copyright.*

The penal provisions of § 4693, as amended by the act of March 3, 1891, had no extraterritorial operation and did not embrace the act of affixing in a foreign country to a publication, a false statement that it was copyrighted under the laws of the United States. *McLoughlin* v. *Raphael Tuck Co.*, 267.

2. *Land grants—Act of March* 3, 1887, 24 *Stat.* 556—*Term "bona fide purchaser."*

The act of March 3, 1887, 24 Stat. 556, is remedial in its nature and, in addition to directing an adjustment with railroad companies of their land grants, provided for securing the equitable rights of parties contracting with the companies, and also those of settlers upon lands within the limits of the grants. The term "*bona fide* purchaser" found in the act is not used in its technical sense, but only as requiring good faith in the transactions between the railroad companies, and parties contracting with them in respect to the lands. One who for a sufficient consideration has obtained an option from a railroad company, giving him the right to purchase within a specified time a large tract of land, and in reliance upon that option has expended money and labor in securing settlers, may be regarded as a "*bona fide* purchaser" within the scope of the act and entitled to the preferential right of purchase given by section 5. While a settler is favored in law, the equities of others must also be considered; and where he places his improvements upon land with full notice of the superior rights of others thereto, he is not entitled to be regarded as a *bona fide* settler either within the letter of the statute or within the reach of any reasonable equities. *Gertgens* v. *O'Connor*, 237.

3. *Navy Personnel Act of March* 3, 1899.

The provision of the Navy Personnel Act of March 3, 1899, 30 Stat. 1004, as to crediting officers appointed from civil life with five year's serv-

ice on the date of appointment for the purpose of computing their pay apply to the pay of officers theretofore appointed from the commencement of the then next fiscal year, when the act by its terms went into operation, and such provisions do not apply to readjusting compensation for any period prior thereto, thereby giving increased pay to officers who had reached maximum pay before the passage of the act. *White* v. *United States*, 545.

4. *Retrospective intent must be clearly evidenced.*

Retrospective legislation is not favored. Unless the intention that a law is to have a retrospective operation is clearly evidenced in the law and its purposes the court will presume that it was enacted for the future and not for the past. *Ib.*

5. *Title, sufficiency of, under California law.*

Under the decisions of the highest court of California, an act of the legislature entitled An Act to amend sections 204, 205, 206 and 208 of the Code of Civil Procedure is not void as contrary to the provisions of the Constitution of the State providing that acts of the legislature should embrace but one subject which shall be expressed in its title. *Ross* v. *Aguirre*, 60.

See MARITIME LAW, 1.

B. OF THE UNITED STATES.

See ACTS OF CONGRESS.

C. OF STATES AND TERRITORIES.

See LOCAL LAW.

SURETIES.

Extension of time of performance of contract without consent—Effect upon obligation of surety company.

The taking by a materialman of thirty and sixty day notes for materials supplied to one contracting with the Government and who had given the bond of a surety company in pursuance of the act of August 13, 1894, 28 Stat. 278, to the effect, among other things that he would "promptly make payment to all persons supplying him labor or materials" will not necessarily relieve the surety company from obligation under the ordinary rule that exonerates a guarantor in case the time fixed for performance of the contract by the principal be extended without his consent, where it does not appear that such extension was unreasonable, or that the surety was prejudiced thereby. *Guaranty Co.* v. *Pressed Brick Co.*, 416.

TAXATION.

1. *State—Tax on imports in original packages.*

The States have no power to tax directly, or by license upon the importer, goods imported from foreign countries or other States, while in their original packages, or before they have become commingled with the

general property of the State and lost their distinctive character as imports. In cases not arising under the police power where an article is made in one State and shipped in its original package in pursuance of an order to a person in another State, to be there delivered on payment of the agreed price, the sale is actually made in the former State and the seller cannot by reason of the delivery of the article and passing of the property in the latter State be subjected to a license tax imposed by it on persons engaged in the sale of similar articles within that State. *Norfolk & Western Ry. Co.* v. *Sims*, 441.

2. *State taxation of national banks—Illegality of tax—Interposition of equity to restrain collection.*

While a State may only tax shares of a national bank in accordance with the Federal statute, a state law, which does not give the shareholders the benefit of all deductions to which they are entitled, is not necessarily void altogether but may be sustained as to the amount properly taxable. The mere lack of a provision in a tax law for notice does not take away the jurisdiction of the taxing officer to make an assessment under any circumstances. If the tax could be imposed for a certain amount it is not void but at most voidable for the illegal amount, if any. Where the amount of the tax which shareholders should pay if all the deductions they claimed were allowed, is ascertainable, neither they, nor the bank itself on their behalf, can maintain an action in equity to restrain the collection of the entire tax. They should, under the rule that he who seeks the interposition of a court in equity, must himself do equity, first offer to pay that part of the tax which under their contention is not illegal. *People's National Bank* v. *Marye*, 272.

3. *State—Power to tax corporation engaged in interstate commerce.*

A State may not impose a tax which is in any way a burden upon interstate commerce; but it may impose a privilege tax upon corporations engaged in interstate commerce for carrying on that part of their business which is wholly within the taxing State and which tax does not affect their interstate business or their right to carry it on in that State. *Allen* v. *Pullman Co.*, 171.

See CONSTITUTIONAL LAW, 4, 7, 11, 13;
RES JUDICATA.

TRADE-MARKS.

See JURISDICTION, E 2;
TRADE-NAME.

TRADE-NAME.

1. *Geographic names—Exclusive right to use.*

Geographic names often acquire a secondary signification indicative not only of the place of manufacture but of the name of the manufacturer or producer, and the excellence of the thing manufactured or produced, which enables the manufacturer or owner to assert an exclusive right

to such name as against every one not doing business within the same geographical limits; and even as against them, if the name be used fraudulently for the purpose of misleading buyers as to the actual origin of the thing produced or palming off the productions of one person as those of another. One otherwise entitled to the exclusive use of a name may lose the right of enforcing it by laches and acquiescing for a period of nearly thirty years in its use and by allowing the name to become generic and indicative of the character of the article. *French Republic* v. *Saratoga Vichy Co.*, 427.

2. *Restraint of use—Jurisdiction of court of equity.*

Where it does not appear that there has been any actual fraud or an attempt to foist an article upon the public as that of the complainant and the articles differ in many respects, the use of a name, the exclusive use whereof is claimed by complainant, accompanied by a descriptive word equally prominent which differentiates it from the original name on a label wholly dissimilar in style, language and form, will not, after a long continued use without protest, justify the interference of a court of equity to restrain its use. *Ib.*

TREATIES.

France—Industrial property treaty, construction of.

It was not intended by Article VIII of the Industrial Property Treaty of June 11, 1887, to put citizens of a foreign country on a more favorable footing than our own citizens or to exempt them from ordinary defences which might be made by the party prosecuting. Under Article II of such treaty, the rights of the French Republic are the same and no greater than those of the United States would be. *French Republic* v. *Saratoga Vichy Co.*, 427.

See FOREIGN STATE.

USURY.

See NATIONAL BANKS, 1.

VESSELS.

See MARITIME LAW.

WARRANTY.

See MARITIME LAW, 5.

WATERS.

See NAVIGABLE WATERS.

WRIT AND PROCESS.

Removal bonds and petitions.

Removal bonds and petitions are in the nature of process. They constitute the process by which the case is transferred from the state to the Federal court. *Kinney* v. *Columbia S. & L. Association*, 78.

See PROHIBITION.